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COMPARATIVE STUDY OF ANTI TERRORISM LAWS WITH RESPECT TO HUMAN RIGHTS PROTECTION IN INDIA, USA AND UK .

TO

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INTRODUCTION:-

In Democratic countries people can express their view without any fear. If the genuine grievances are not looked into, the people have other democratic and non-violent means available to them to attract the attention of the government. However in recent years some people have started restoring to terrorism to express their demands. The innocent and helpless people have become their victims. The rule of law is predictable and rule of terror is unpredictable.

The phenomenon of terrorism became an international concern in 1960. When a series of airplane hijacking hit the headlines. Then the 1972 Munich Olympic Games were disrupted by Palestinian group's attempt to take Israeli athletes as hostages.

This was followed by kidnapping, assassination and so on by the groups like Iranian Mujahedeen, Palestinian Hamas, Armenian Asals, German Bunder Mein Hof, Japanese Red Army, Irish Republican Army, these have forged links and alliance to commit terrorist attacks worldwide from 1980s India is facing the menace of viz. Terrorist activities in Jammu and Kashmir and Punjab, insurgent activities in the North Eastern States, and Naxalite problem in Bihar, Orissa, Chhattisgarh, Maharashtra and Andhra Pradesh.

The World's outlook towards terrorist and terrorist organizations has changed after the series of terrorist attack on America on September 9, 2001 and bomb attack on London on July 7, 2005.

The world which believes in the rule of law and respect for Human Right and another world of Terrorism which leads to anarchy chaos and not respect for human rights get together due to the damage caused to

civilized world by the terrorist attack on United State, bomb attack on London and Pakistan trained Terrorist attack on Mumbai is unprecedented in numbers of victims and loss of life and property.

India has been among the major victims of terrorism mostly cross border state sponsored terrorism for over two decades.

In India Section 15 of the Unlawful Activities (Prevention) Amendment Ordinance 2004 defines Act as " Whoever with intent to Threaten the Unity; integrity; security or sovereignty of India or to strike terror in the people or any sple in section of the people in India or does any act by using bombs dynamite or other explosive substance or inflammable substances or firearms or other substances (Whether biological or otherwise) of a hazardous nature in such a manner as to cause or likely to cause death of or injuries to any person or persons or loss of or damage to or destruction of property or disruption of any supplies or series essential to the life of the community in India or cause damage or destruction of property or equipment used for the defense of India, any state government or any of their agencies or detains any person of India or threatens to kill or injure such person in order to compel the government of India or any other person to do so or abstain from doing any act commits a Terrorist act.

The US Department of Defense define it as "The unlawful use of or threatened use of force or violence against individuals or property to coerce or intimate government or societies, often to achieve political, religious or ideological objectives.

TYPES OF TERRORISM:-

Terrorists are motivated by different goals and objectives depending on the objectives of the group/groups. The nature of terrorism also differs. The major types of terrorist operations commonly identified globally include:-

1. Ethno Nationalist Terrorism:-

These Terrorist deliberately create violence by a subnational ethnic group to advance its cause. Such violence usually focuses either on the creation of a separate state or the elevation of the status of one ethnic group over others. Tamil Nationalist group in Srilanka and insurgent groups in North East India.

2. Religious Terrorism:-

Present day terrorist activities around the world are motivated largely by religious imperatives. The practitioners of terrorism motivated either in whole or in part by a religious imperative consider violence as a divine duty or a sacramental Act.

3. Ideology oriented Terrorism:-

Any ideology can be used to support the use of violence and terrorism Ideology oriented terrorism is generally clarified into:-

a. Left Wing Terrorism

b. Right Wing Terrorism

4. State Sponsored Terrorism:-

Some countries have embraced terrorism as deliberate instruments of foreign policy one distinction of state sponsored terrorism from other forms of terrorist activity is that it is initiated to obtain certain clearly defined foreign policy objectives rather than grabbing media attention.

RULE OF LAW AND TERRORISM:-

The concept of Rule of Law has old origin and is an ancient ideal. It was discussed by ancient Greek Philosophers such as Plato and Aristotle around 350 BC. Plato wrote “Where the law is subject to some other authority and has none of its own, the collapse of the state in my view is not far off but if law is the master of the government and the government is its slave. Then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.

Aristotle also endorsed the concept of Rule of Law by writing that law should govern and those in power should be servants of the laws. Albert Venn Dicey gave three meanings to Rule of Law:-

1. Absence of discretionary powers and Supremacy of Law:-

No man is above law. No man is punishable except for a distinct breach of law established in an ordinary legal manner before ordinary courts. The Government cannot punish any one merely by its own fiat. Persons in authority do not enjoy wide, arbitrary or discretionary power. Dicey asserted that wherever there is discretion there is room for arbitrariness.

2. Equality before law:-

Every man, whatever his rank or condition is subject to the ordinary law and jurisdiction of the ordinary courts. No person should be made to suffer in body or deprived at his property except for a breach of law established in the ordinary legal manner before the ordinary courts of land.

3. Predominance of Legal Spirit:-

The general principal of the British Constitution especially the liberties and rights of the people must come from traditions and customs of the people and be recognized by the court in administration of justice from time to time.

The doctrine of Rule of Law as enunciated by Dicey has been adopted and varies succinctly incorporated in the Indian constitution. The ideals of the constitution viz. Liberty, justice and equality are enshrined in the preamble itself.

The Constitution of India has been made the Supreme Law of the Country and other laws are required to be in conformity with it. Any law which is fund in violation of any provisions of the constitution, particularly the Fundamental Rights is declared void. The Indian Constitution also incorporates the principal of equality before law and equal protection of laws enumerated by Dicey under Article 14. The very basic human Right to life and also been enshrined under Article 21 of Indian Constitution. Article 19(1)(a) of the Indian Constitution guarantees the third principal of the Rule of Law i.e. Freedom of Speech and Expression.

No person can be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence is also well recognized in the Indian Constitution. Article 14, 19 & 21 are the basic that they are also called the golden triangle Article of the Constitution of India.

The constitution also ensures an independent an impartial judiciary to settle dispute and grievances for violation of fundamental rights by virtue of Article 32 and 226.

Human Rights and Terrorism: -

Human Rights of Innocent citizens in the Terrorist act.

There has been a growing consciousness amongst citizens all over the world against violation of human rights string national and international movements has emerged. It goes without saying that human rights of citizens are concomitant and non-negotiable. No compromise with violations of the same is permissible in any civilized society, irrespective of religion, race, caste, sex, language or economic level of living.

It is a reality that call of terrorism strikes at the very root of human rights of innocent people and terrorism and the ruthless, barbaric, inhuman killing of innocent people is carried out by the terrorist with a view not only to challenge the authority of the Government but also to put the security and sovereignty of the country in jeopardy and bring trauma and perpetual grief killings whether they are innocent young children, elderly men & women. The very right to life of the innocent people is the target of terrorism.

A Natural Rights to all individuals including the rights to a fair trial, and to legal access and the prohibition of illegal detention are generally ensured by human right legislation. On other hand, Anti-Terrorism aims to protect citizens from further basic fundamental rights.

Hence in doing so national security policies and legislation potentially infringe interpretations of the fundamental human rights of those suspected of organizing or plotting such attacks.

STATEMENT OF PROBLEM:-

The Safety of the citizen is the most important function of the state. first priority of any government is to ensure the Security and Safety of the nation and all the members of the public. No government worth the name can abdicate this function and put the life and liberty of the citizens in jeopardy.

The Constitution of India provides the due process of law available to every individual before his liberty is restricted irrespective of whether he is an ordinary criminal or a dreaded terrorist. To punish terrorist also there should be procedure established by the law.

The procedure established by law of Article 21 has come on equal pedestal with the due process clause of the American Constitution contained in the V & XIV amendments.

Anti-Terrorist laws are special laws designated to achieve the specific purpose of combating terrorism. Therefore they establish a different legal regime than the one available to tackle ordinary crime. They establish special courts and lay down special procedures.

The question of Human Rights is always arise on every attack when the suspects are rounded up after every terrorist outrights beside most cases are fall blank due to poor conviction rate in our court.

So India has to enact effective preventive legislation as presumptive measure to combat terrorism. The new enacted law related to Terrorism should be to safeguard Human Rights, strengthen democracy and uphold the Rule of Law and which provided for major conviction of Terrorist as countries like USA and the UK have passed stringent Anti-Terrorist law.

My main research questions are:-

1. What are the differences and similarities between the Anti-Terrorism law of India, USA and UK concerning the human rights of the suspects?

2. By considering the approaches of INDIA ,USA and UK. it will be possible to identify whether there are differences in the approaches of the countries and whether the modern threat from terrorism justifies the broad range of powers claimed by governments.

Is it possible to combat terrorism through the use of enhanced domestic law without the need to potentially infringe so much upon fundamental rights of suspects?

Or does the extraordinary nature of the unconventional threat of terrorism require the use of extraordinary measures which justify an infringement of fundamental rights of suspects?

OBJECTIVE OF STUDY:-

The primary object of this study is to investigate into the constitutional compliance of the Anti-Terrorist laws enacted to tackle the menace of terrorism and development of laws relating to terrorism in India. An analysis of these laws is to be under taken along with the interpretation.

Second object is to go for a comparative study of the Anti-Terrorist laws in India, USA and UK.

Third objective is study the role of investigation agency of USA, UK and India.

Fourth objective is what precautions are required to be taken to prevent misuse of these laws by the executive branch of government.

Fifth objective is How to take effective measures to combat terrorism by protection of Human Rights, preservation of Human Rights and promotion of Human Rights.

The overall object of the thesis is not simply to compare and contrast the approaches of India, USA and UK. The ultimate goal is to draw important distinctions between the institutional practices and law of the different countries, in order to evaluate successful practices to deal with perceived terrorist threats. It will also analyze practices considered as inadequate in order to enable the country-wise legal methods what can be considered to be excessively draconian to fundamental rights of citizens.

RESEARCH METHODS:-

The study is completely doctrinal and involves primarily the content analysis of legislations and judicial decisions. It employs historical method in some areas to trace the evolution of Anti-Terrorist legislations.

It employs comparative Analysis method with critical analysis and evaluation of legislation and judicial decisions of different courts. For critical analysis of the law and role of court pertinent secondary source such as juristic writings manifesting through scholarly books and articles published in journal are consulted.

IMPORTANCE OF THE STUDY:-

The Importance of this research study presents an in depth analysis of how Anti-Terrorism legislation governing domestic law enforcement structures, laws & policies have generally changed in India, USA and UK since September 11, 2001.

By comparing the approaches of the three countries it will be possible to analyze whether these nations are achieving a viable constitutional balance between protecting national security and human rights. It will also be possible to conclude whether one country can learn from the success and failures of other country.

The specific aim of this research is to critically explore the constitutional legitimacy of the measures taken by India USA and UK. This will involve analyzing justifications offered by the executive and the judiciary in their struggle to balance and reconcile specific interpretations of the meaning scope and purpose of human rights imperatives against countervailing national security interests.

Also, three countries are common law jurisdictions and although these nations have experienced terrorism, there are important constitutional

differences. The USA and India has a written constitution and arguably a stronger individual rights tradition. The UK, on the other hand, has an unwritten constitution and it is only the implementation of the Human Rights Act in 1998 that has bought greater recognition of individual rights.

HYPOTHESIS:-

The researcher has formulated the following hypothesis to be verified through the study:-

1. The Anti-Terrorist laws enacted to contain terrorism are in conformity with the due process requirement of the constitution.

2. There are some provisions in the Anti-Terrorist laws which fail to answer the constitutional standards.

3. The use of Provisions of Anti-Terrorist laws to try ordinary offenses leads to unfair process.

4. The Anti-Terrorist law which places a very onerous burden on the prosecution to prove the case of the investigating authority will prove detrimental to national security.

5. The Anti-Terrorism laws enacted by the UK and USA are conformity with the due process. These laws are one of the means to prevent Terrorist acts.

SOURCES OF INFORMATION:-

The information will be gathered from the various sources like the data collected from various Law Books , all conventions , reports, amendments acts, articles, newspapers, law journals, excerpts from Law Commission Reports, libraries, case laws and information gathered from different internet websites, judicial and administrative bodies etc.

GENERAL SCHEME OF CHAPTERISATION

This study under the heading “Comparative Study of Anti-Terrorism Law with respect to Human Rights Protection in India, USA and UK” is planned in chapters.

1. FIRST CHAPTER:- INTROUCTION

This chapter is concerned with an elucidation of the problem, objectives of the study, hypothesis, its importance and the methodology adapted to study.

2. SECOND CHAPTER:- CHANGING CRIME SCENARIO

Criminal law which is basic law of every society upon which entirely civilization is built. The primary function or purpose of the criminal law is to maintain security and stability. Ultimate goal of criminal law is crime free society.

The researcher in the second chapter discusses the different definition of crime form the point of traditional and modern approaches further the chapter elaborately explains the modern crime like socio-economic offences, organized crime and terrorism that have significantly affected the entire bulk of society. This chapter also unfolds the history and development of terrorism problem of defining the terrorism problem of defining the terrorism and describes the typology of terrorism.

3. THIRD CHAPTER:- NEW DIMENSIONS OF CRIMINAL JURISPRUDENCE

Traditional criminal law is founded on certain basic principal like no act or omission is crime unless statue prohibits it. Men’s Rea and Actus Reus both must occur to constitute crime and accused is presumed to be innocent until his guilt is proved & right against self-incrimination.

But in modern society would be at risk if criminal justice fails to meet the

challenges of new kinds of crime. The third chapter explains necessity devices in the modern criminal jurisprudence.

4. FOURTH CHAPTER: - THE INDIAN CONSTITUTION AND GENERAL LAWS.

The fourth chapter has elaborately discussed the ingredients of a fair trial in the Indian Legal System. The researcher has made an attempt to logically analyze the contours of fair trial under the code of criminal procedure1973 and the Indian Evidence Act, 1872 and various article of the Indian Constitution

5. FIFTH CHAPTER:- INTERNATIONAL MEASURES TO COMBAT TERRORISM:-

The fifth chapter is concerned with the developments that have taken place at international level to address the challenged thrown open by the terrorism in new forms in modern society. The United Nations General Assembly and Security Council have passed appropriate resolutions at appropriate time. This chapter discusses all the issues.

6. SIXTH CHAPTER:- COUNTER-TERRORISM AND HUMAN RIGHTS,

RULE OF LAW

This chapter seeks to prevent detail overview of Human Rights relations with Anti-Terrorism Laws and rule of law.

7. SEVENTH CHAPTER:- ANTI TERRORISM LAW IN INDIA

The seventh chapter highlights salient features of Anti-Terrorist laws enacted since 1980 in India. India is one of the states which have been severely affected by the activity of Terrorist activities. India government have enacted Anti-Terrorist legislations to deal with terrorism beginning with National Security Act 1980 to the now much debated unlawful Activities (Prevention) amendment Act, 2008. These legislations are analyzed in this chapter.

8. EIGHTH CHAPTER: - ANTI- TERRORISM LAW IN USA.

This chapter seeks the detail study of Anti-Terrorism laws in USA as Patriot Act USA, The Freedom Act (USA), 2015.

9. NINETH CHAPTER: - ANTI- TERRORISM LAW IN UK.

This chapter is related with the measures adopted by UK government to combat terrorism.

- Terrorism Act 2000 UK
- Anti-Terrorism, Crime and Security Act 2001 UK
- The Human Rights Act 1998 (UK)

10. TENTH CHAPTER: - COMPARATIVE STUDY OF ANTI-TERRORISM LAWS IN INDIA USA AND UK.

The main aim of the research is to make comparison of Anti-Terrorism law of UK USA and India. What is approach adopted by these countries to light against the terrorism is compared with Indian Anti-Terrorism law.

11. ELEVENTH CHAPTER:-CONCLUSION AND SUGGESTIONS

In this chapter on the basis of the study certain conclusions are drawn. It is shown through Critical Analysis that the hypotheses are proved.

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